



1 which were denied as of October 10, 2007. Petitioner filed the instant federal habeas  
2 petition on November 14, 2007.

### 3 DISCUSSION

#### 4 A. Standard of Review

5 This Court may entertain a petition for writ of habeas corpus “in behalf of a person  
6 in custody pursuant to the judgment of a state court only on the ground that he is in  
7 custody in violation of the Constitution or laws or treaties of the United States.” 28  
8 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

9 A district court shall “award the writ or issue an order directing the respondent to  
10 show cause why the writ should not be granted, unless it appears from the application that  
11 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

#### 12 B. Petitioner’s Claims

13 As grounds for federal habeas relief, Petitioner alleges: (1) the Board applied an  
14 arbitrary and repetitive reason for its parole denial based on the offense itself in violation  
15 of Petitioner’s protected liberty interest in release on parole and the right to due process in  
16 the parole suitability; and (2) when the Board set its own standard of interpretation of the  
17 law, and fails to execute and enforce a legislature’s statutes as intended the court has a  
18 duty to intervene to enforce the separation of powers doctrine. Liberally construed,  
19 Petitioner’s allegations are sufficient to require a response. The Court orders Respondent  
20 to show cause why the instant petition should not be granted.

### 21 CONCLUSION

22 1. Petitioner’s motion to proceed in forma pauperis (docket no. 3) is DENIED  
23 as moot because Petitioner has paid the filing fee

24 2. The Clerk shall serve by mail a copy of this order and the petition  
25 and all attachments thereto upon the Respondent and the Respondent’s attorney, the  
26 Attorney General of the State of California. The Clerk shall also serve a copy of this  
27 order on the Petitioner.

28 ///

1           3.       Respondent shall file with the Court and serve on Petitioner, within **sixty**  
2 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
3 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
4 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of  
5 all portions of the state parole record that have been transcribed previously and that are  
6 relevant to a determination of the issues presented by the petition.

7           If Petitioner wishes to respond to the answer, he shall do so by filing a traverse  
8 with the Court and serving it on Respondent within **thirty days** of his receipt of the  
9 answer.

10          4.       Respondent may file a motion to dismiss on procedural grounds in lieu of  
11 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
12 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file  
13 with the Court and serve on Respondent an opposition or statement of non-opposition  
14 within **thirty days** of receipt of the motion, and Respondent shall file with the Court and  
15 serve on Petitioner a reply within **fifteen days** of receipt of any opposition.

16          5.       It is Petitioner's responsibility to prosecute this case. Petitioner is reminded  
17 that all communications with the Court must be served on respondent by mailing a true  
18 copy of the document to Respondent's counsel. Petitioner must keep the Court and all  
19 parties informed of any change of address by filing a separate paper captioned "Notice of  
20 Change of Address." He must comply with the Court's orders in a timely fashion.  
21 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
22 to Federal Rule of Civil Procedure 41(b).

23           IT IS SO ORDERED.

24   DATED: 2/1/08

  
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Morgan A. Tyson  
3 C-81713  
4 CSP -San Quentin  
San Quentin, CA 94964